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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

LYNN GRIMSTAD, *et al.*,

Plaintiffs,

v.

FCA US LLC,

Defendant.

Case No. 8:16-cv-00763-JVS-E

**FCA US LLC'S NOTICE OF MOTION
AND MOTION TO TRANSFER;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

[CLASS ACTION]

DATE: July 11, 2016

TIME: 1:30 p.m.

JUDGE: James V. Selna

COURTROOM: 10C

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 11, 2016 at 1:30 p.m., or as soon thereafter as counsel may be heard in Courtroom 10C of the above-captioned court, located at 411 West Fourth Street, Room 1053, Santa Ana, CA 92701-4516, Defendant FCA US LLC will and hereby does move this Court for an order transferring this case to the United States District Court for the Southern District of New York, for referral to the Bankruptcy Court in that District.

This motion is made on the grounds that, pursuant to 28 U.S.C. § 1412, transfer of this case to the United States District Court for the Southern District of New York, for referral to the Bankruptcy Court in that District, will serve the interest of justice because this case arises under, arises in, and is related to the bankruptcy proceeding pending in the Southern District of New York known as *In re Old Carco LLC (f/k/a Chrysler LLC)*, Case No. 09-50002.

This motion is based on this Notice of Motion, FCA US's Memorandum of Points and Authorities, FCA US's Request for Judicial Notice, and other documents filed in this action, and on such other and further matters as may be presented to the Court at or prior to the hearing.

This motion is made following a conference with counsel pursuant to L.R. 7- 3, which took place on May 11, 2016.

Dated: May 27, 2016

THOMPSON COBURN LLP

By: /s/ Rowena Santos
Rowena Santos

Attorneys for Defendant FCA US LLC

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a vehicle-defect class action. All eleven of the claims pleaded in the First Amended Complaint (“FAC”) are based on the notion that Plaintiffs’ vehicles, and others like them, have a “hardware” defect which Defendant FCA US LLC ignored when it provided a software update during a vehicle recall mandated by the National Traffic and Motor Vehicle Safety Act, 49 U.S.C § 30101, *et seq.*, and conducted under the supervision of the National Highway Transportation Safety Administration (“NHTSA”). According to Plaintiffs, the vehicles at issue were manufactured with a “hardware” defect that allows the transfer cases in them to inadvertently shift into neutral, and the recall remedy provided by FCA US not only failed to address this defect, it resulted in the loss of some of the four-wheel-drive functions in their vehicles.

FCA US did not manufacture or sell Plaintiffs’ vehicles, and in its provision of the recall remedy FCA US was merely fulfilling obligations imposed by the Safety Act as required by a “Sale Order” issued by the United States Bankruptcy Court for the Southern District of New York (“Bankruptcy Court”). That Sale Order bars civil claims against FCA US that are based on and contingent on a defect in a vehicle FCA US did not manufacture, and those claims which arise out of FCA US’s actions in fulfilling duties imposed by the Safety Act.

Because the threshold issue here is whether Plaintiffs’ claims are barred by a Sale Order entered by the Bankruptcy Court, FCA US respectfully requests that this case be transferred to that Court so it can interpret and enforce its own Sale Order, and continued uniformity in its application will be assured.

II. FACTS RELEVANT TO TRANSFER MOTION

A. Old Carco’s Bankruptcy And FCA US’s Purchase Of Assets.

On April 30, 2009, Old Carco LLC and several of its subsidiaries filed for bankruptcy protection in the United States Bankruptcy Court for the Southern

1 District of New York. *See In re Old Carco LLC (f/k/a Chrysler LLC)*, Case
2 No. 09-50002 (Bankr. S.D.N.Y.) (“the Bankruptcy Proceeding”).¹ The Bankruptcy
3 Proceeding remains pending. *Id.*

4 FCA US, an entity that did not exist until April 28, 2009,² purchased certain
5 assets of Old Carco in the Bankruptcy Proceeding. FCA US purchased the assets
6 pursuant to the terms of a “Sale Order” entered by the Bankruptcy Court on
7 June 10, 2009.³ In the Sale Order, the Bankruptcy Court found that FCA US (*i.e.*,
8 the “Purchaser”) would have no liabilities for any claims which existed against Old
9 Carco except for those liabilities which it ***expressly*** assumed. *See* Sale Order,
10 pp. 40-41, ¶ 35. So as to ensure that FCA US would bear no responsibilities for the
11 debts and liabilities of Old Carco (except as otherwise expressly assumed), the
12 Bankruptcy Court found that FCA US was ***not***, and could ***not*** be found to: “(a) be
13 a legal successor, or otherwise be deemed a successor to the Debtors (other than
14 with respect to any obligations arising under the Assumed Agreements from and
15 after the Closing); (b) have, *de facto*, or otherwise, merged with or into the
16 Debtors; or (c) be a mere continuation or substantial continuation of the Debtors or
17 the enterprise of the Debtors.”⁴ *Id.*

18
19
20 ¹This Court can take judicial notice of the documents of record in the
21 Bankruptcy Proceeding. *See In re NJOY, Inc. Consumer Class Action Litig.*, 120
22 F.Supp.3d 1050, 1067 (C.D.Cal. 2015) (*citing United States v. Black*, 482 F.3d
1035, 1041 (9th Cir. 2007)).

23 ²*See* Request for Judicial Notice (“RJN”), Exhibit 1.

24 ³A copy of the Sale Order (without its voluminous exhibits) is attached as
25 Exhibit 2 to RJN. A copy of the complete Sale Order is available through PACER
at the Bankruptcy Court’s website at docket number 3232.

26 ⁴Plaintiffs have not pleaded any “continuity,” “merger,” or “de facto merger”
27 theory of liability. The Sale Order expressly makes clear that there is no basis to
28 pursue such a theory. Plaintiffs, however, seem to be aiming for such a theory as
they aver that their vehicles were manufactured by FCA US or a “predecessor.”
See, e.g., FAC ¶¶ 1, 18.

1 There is nothing in the Sale Order which could be construed as FCA US
2 expressly assuming any liabilities for any fraud-based claims of any nature, or for
3 claims seeking economic damages based on theories of trespass, conversion,
4 negligent misrepresentation, promissory estoppel, negligence, strict liability, or
5 breach of implied warranty. The Sale Order does not indicate that FCA US was
6 assuming liabilities for claims seeking declaratory or injunctive relief.⁵ In the Sale
7 Order FCA US did not assume liabilities for statutory damages, punitive damages,
8 or any type of consequential damages such as “loss of use” or “diminution in
9 value.” And, the Sale Order expressly bars claims against FCA US which seek
10 economic damages due to design and/or manufacturing defects in vehicles that
11 were manufactured by Old Carco. *Id.* at pp. 28-29, ¶¶ 12-13. While FCA US
12 agreed to assume certain responsibilities and liabilities ***owed to the NHTSA*** for
13 motor vehicles containing a defect, this assumption expressly excluded all
14 liabilities associated with “pre-bankruptcy” vehicles other than those liabilities
15 owed to the NHTSA:

16 [FCA US] has agreed to assume as Assumed Liabilities under the
17 Purchase Agreement and this Sale Order the Debtors’ notification,
18 remedy and other obligations under 49 U.S.C. §§ 30116 through
19 30120 of the NTMVSA [National Traffic and Motor Vehicle Safety
20 Act] relating to vehicles manufactured by the Debtors prior to the
21 Closing Date that have a defect related to motor vehicle safety or do
22 not comply with applicable motor vehicle safety standards prescribed
23 under the NTMVSA. [FCA US] shall not otherwise be liable for any
24 failure by the Debtors to comply with the provisions of the NTMVSA.

25 *Id.* at p. 21, ¶¶ EE.

26 ⁵The Bankruptcy Court has repeatedly found that for civil claims brought by
27 private individuals that do not involve vehicle accidents, the only liabilities which
28 FCA US assumed are those meeting the Sale Order’s criteria for a “Lemon Law”
claim. *See, e.g.,* RJN, Exhibits 3 and 4.

1 Notably, in its Sale Order, the Bankruptcy Court expressly retained
2 jurisdiction “to interpret, implement and enforce [these] terms and provisions” and
3 “to protect [FCA US] against any Claims.” *Id.* at p. 49, ¶ 59.

4 The Sale Order is a final order for which all appellate remedies have been
5 exhausted. *See Ind. State Police Pension Trust v. Chrysler LLC*, 130 S.Ct. 1015
6 (2009); *In re Chrysler LLC*, 592 F.3d 370 (2d Cir. 2010); *In re Chrysler LLC*, 576
7 F.3d 108 (2d Cir. 2009). The transaction identified in the Sale Order closed on
8 June 10, 2009. The estate of Old Carco LLC continues to be administered in the
9 Bankruptcy Court, although Old Carco has been dissolved and its assets have been
10 placed in the Old Carco Liquidation Trust.

11 **B. The Allegations Underlying Plaintiffs’ Claims.**

12 Plaintiffs each own a model-year 2006 Jeep Grand Cherokee manufactured
13 and sold before FCA US existed. *See* FAC ¶¶ 9-10. According to Plaintiffs, their
14 vehicles were manufactured with a defective Final Drive Control Module
15 (“FDCM”) component. *Id.* at ¶¶ 21, 23, 209. The defect is purportedly one
16 involving “hardware” versus “software.” *Id.* at ¶ 21, 25.

17 **C. The Recall of the “Class Vehicles” Underlying Plaintiffs’ Claims.**

18 On May 7, 2013, FCA US informed the NHTSA that it would conduct a
19 recall of all model-years 2005-10 Jeep Grand Cherokee vehicles and model-years
20 2006-10 Jeep Commander vehicles to address a potential safety-related defect
21 (“Recall N23”). *See* Letter to NHTSA, attached to RJN as Exhibit 5; *see also*
22 Letter from NHTSA to FCA US acknowledging recall, attached to RJN as
23 Exhibit 6. Recall N23 was implemented to address the possibility of an electrical
24 failure in the FDCM that could result in vehicles unintentionally shifting into the
25 neutral position, which could in turn result in an inadvertent rollaway. *Id.* The
26 remedy provided by FCA US under Recall N23 was a re-flash the FDCM with new
27 software. *See* RJN at Exhibits 5, 6.

1 **D. Plaintiffs’ Claims, Proposed Class, and Requested Relief.**

2 Plaintiffs assert claims for: trespass to chattel (Count I); conversion
3 (Count II); fraud (Count III); fraudulent concealment (Count IV); negligent
4 misrepresentation (Count V); promissory estoppel (Count VI); violation of
5 California’s Unfair Competition Law, Bus. & Prof. Code § 17200 (Count VII);
6 negligence (Count VIII); strict liability (Count IX); breach of implied warranty
7 (Count X); and declaratory relief (Count XI). *Id.* at ¶¶ 70-231. The case is filed on
8 behalf of persons in the United States who own model-years 2005-10 Jeep Grand
9 Cherokee vehicles and model-years 2006-10 Jeep Commander vehicles which were
10 subjected to Recall N23. *Id.* ¶¶ 47-48. Plaintiffs seek to recover loss of use and
11 diminution in value damages which they attribute to a defect in the FDCM
12 hardware and the effects of Recall N23. *See, e.g., id.* at ¶¶ 82-83, 85-86, 88-89, 93,
13 115-119, 154-155. Plaintiffs also seek: declaratory and injunctive relief; “actual,
14 compensatory, and/or statutory damages”; “punitive and exemplary damages”; and
15 restitution. *Id.* at Prayer for Relief.

16 **E. FCA US’s Position On Remand After Transfer.**

17 FCA US represents and agrees as follows: If this case is transferred so that
18 the Bankruptcy Court can interpret its own Sale Order on the “claims barred”
19 issues implicated by the claims Plaintiffs plead, FCA US will not oppose a motion
20 seeking to remand back to this Court whatever claims may remain after the
21 Bankruptcy Court issues its order.

22 **II. ARGUMENT**

23 It is indisputable that the claims pleaded against FCA US necessitate, in the
24 first instance, an interpretation of the Sale Order entered by the Bankruptcy Court.

25 *First*, Plaintiffs seek damages that arise out of an alleged defect in a vehicle
26 that was not designed, manufactured, or sold by FCA US, and remedial actions that
27 would not have occurred but-for the defect. Furthermore, Plaintiffs seek
28 consequential and punitive damages, restitution, and declaratory and injunctive

1 relief. But FCA US contends that the Sale Order entered by the Bankruptcy Court
2 bars the claims pleaded and the relief sought.

3 *Second*, Plaintiffs seek to hold FCA US liable in a civil proceeding for acts it
4 committed in the course of, and that are related to, its assumption of the obligations
5 owed by Old Carco to the NHTSA regarding investigations and recalls. FCA US
6 contends, however, that civil claims are barred by the Sale Order to the extent they
7 are based on actions FCA US took with respect to vehicles manufactured by Old
8 Carco in response to a NHTSA investigation and recall process.

9 Because the Bankruptcy Court is in the best position to interpret its own Sale
10 Order, and because a uniform interpretation of that Sale Order is vital, FCA US
11 seeks transfer. In doing so, FCA US is not asking this Court to determine whether
12 Plaintiffs' claims are barred. Rather, at this point, FCA US asks only that this
13 Court determine which of the two courts should make the determination of whether
14 the Sale Order bars Plaintiffs' claims: the Bankruptcy Court which issued the Sale
15 Order, retained jurisdiction to interpret it, and has consistently and repeatedly done
16 that over the years; or this Court which was not involved in the issuance of the Sale
17 Order and which has had no occasion to interpret or apply it.

18 **A. Law Governing Transfers.**

19 Courts within the Ninth Circuit (and elsewhere) have repeatedly found that
20 28 U.S.C. § 1412 applies when determining whether a case "related to" a
21 bankruptcy proceeding should be transferred to a bankruptcy court. *See, e.g.,*
22 *Jackson v. Fenway Partners, LLC*, 2013 WL 1411223, *3 (N.D.Cal. 2013);
23 *Mendoza v. Gen. Motors, LLC*, 2010 WL 5224136, *4 (C.D.Cal. 2010); *Reid-*
24 *Ashman Mfg., Inc. v. Swanson Semiconductor Svc., L.L.C.*, 2008 WL 425638, *1
25 (N.D.Cal. 2008); *accord Creekridge Capital, LLC v. La. Hosp. Ctr., LLC*, 410 B.R.
26 623, 628 (D.Minn. 2009); *KFC Corp. v. Wagstaff*, 2013 WL 3166165 (W.D.Ky.
27 2013); *Quesenberry v. Chrysler Group LLC*, 2012 WL 3109431, *4 (E.D.Ky.
28

1 2012); *RFF Family P'ship, LP v. Wasserman*, 2010 WL 420014, *5 (N.D. Ohio
2 2010).

3 Application of § 1412 is particularly appropriate here because that provision
4 applies to core proceedings. The Bankruptcy Court has found that cases like this
5 which require an interpretation of, and enforcement of, its Sale Order are core
6 proceedings. *See In re Old Carco LLC/Wolff v. Chrysler Group LLC*, Case No. 09-
7 50002, Adv. Proc. No. 10-05007, p. 7 (S.D.N.Y.), attached to RJN as Exhibit 7; *see*
8 *also Quesenberry v. Chrysler Group LLC*, 2012 WL 3109431, *4 (E.D.Ky. 2012)
9 (finding that § 1412 applied to transfer motion which was based on need for
10 interpretation of Bankruptcy Court's Sale Order because need for interpretation
11 made it a core proceeding).

12 Under § 1412, transfer may be granted “in the interest of justice **or** for the
13 convenience of the parties.” 28 U.S.C. § 1412 (emphasis added). As this District
14 has recognized, because § 1412 is “phrased in the disjunctive,” transfer may be
15 appropriate even where one factor or the other is not present, or even “weigh[s]
16 somewhat against transfer.” *Jackson*, 2013 WL 1411223 at *4; *see also*
17 *Creekridge*, 410 B.R. at 629 (“transfer under § 1412 requires a sufficient showing
18 that granting the transfer **either** will be in the interest of justice or for the
19 convenience of the parties”); *RFF Family*, 2010 WL 420014, at *4 (“the ‘interest
20 of justice’ and ‘convenience of the parties’ standards in § 1412 are disjunctive and
21 separate, and transfer is appropriate even if only one is met”).

22 Transfer of this case is appropriate under § 1412 because it arises under,
23 arises in, and is related to the bankruptcy case of *In re Old Carco LLC (f/k/a*
24 *Chrysler LLC)*, Case No. 09-50002 (Bankr. S.D.N.Y.), and the interest of justice
25 will best be served by transfer. There are two alternative threshold issues here,
26 each of which requires an interpretation of the Sale Order: whether Plaintiffs’
27 claims arise out of a manufacturing defect and thus are barred by the Sale Order’s
28 provision limiting FCA US’s liabilities to “Lemon Law” claims; and/or whether

1 Plaintiffs' claims are barred because they arise out FCA US's assumed duties owed
2 to the NHTSA which limits FCA US's obligations to only that agency.⁶

3 As one district court has observed, courts routinely transfer cases brought
4 against FCA US to the Bankruptcy Court when an interpretation of the Sale Order
5 is required:

6 Courts that have construed this [§ 1412] transfer provision in the
7 context of [FCA US] warranty claims and other related litigation have
8 consistently found that an assessment of the interests of justice calls
9 for uniform and consistent treatment of these claims by the bankruptcy
10 court, the court with jurisdiction over these bankruptcy proceedings,
11 which is uniquely well-poised to determine whether any particular
12 claim has any continuing viability in light of the Master Transaction
13 Agreement approved in that district.

14 *Ritter v. Chrysler Group LLC*, 2013 WL 7175621, *3 (M.D.Pa. 2013) (*adopted*
15 2014 WL 549706 (M.D.Pa. 2014)) (citations omitted). The court's analysis and
16 findings in *Ritter* are amply supported by virtually every other district court. These
17 courts—including those within the Ninth Circuit—have routinely transferred cases
18 brought against FCA US to the Bankruptcy Court when, as here, FCA US contends
19 it has no legal liability for the claims pleaded based on the bar imposed by the Sale
20 Order.⁷ Because an interpretation of the Sale Order is required here, transfer
21 should be granted.

22
23 ⁶Notably, the Motor Vehicle Safety Act, set forth at 49 U.S.C. § 30101, *et*
24 *seq.*, confers no private cause of action to enforce its provisions. *See, e.g., Ayres v.*
25 *Gen. Motors Corp.*, 234 F.3d 514, 523 (11th Cir. 2000); "Instead, the [NHTSA]
controls the exclusive remedies under the Act." *Campbell v. Gen. Motors Corp.*,
19 F.Supp.2d 1260, 1274 (N.D.Ala. 1998).

26 ⁷*See, e.g., Shatzki v. Abrams*, 2010 WL 148183 (E.D.Cal. 2010); *Doss v.*
27 *Chrysler Group LLC*, 2009 WL 4730932, *3 (D.Ariz. 2009); *Quesenberry*, 2012
28 WL 3109431; *Tatum v. Chrysler Group LLC*, 2011 WL 6303290 (D.N.J. 2011);
Perno v. Chrysler Group LLC, 2011 WL 868899 (D.N.J. 2011); *Cooper v. Daimler*
AG, 2009 WL 4730306, *4 (N.D.Ga. 2009).

1 **B. Transfer Will Promote The Interest Of Justice.**

2 This Court's discretion to transfer under § 1412 is "broad." *TIG Ins. Co. v.*
3 *Smolker*, 264 B.R. 661, 668 (C.D.Cal. 2001); *accord CreekrIDGE*, 410 B.R. at 629;
4 *RFF Family*, 2010 WL 420014, at *8.

5 FCA US seeks transfer "in the interest of justice." Courts within the Ninth
6 Circuit and elsewhere have identified specific factors to be considered in
7 determining whether transfer is appropriate in the interest of justice: (1) the
8 economical and efficient administration of the bankruptcy estate; (2) "the
9 presumption in favor of the forum where the bankruptcy case is pending";
10 (3) judicial efficiency; (4) the ability to receive a fair trial; (5) the state's interest in
11 having local controversies decided within its borders; (6) the enforceability of any
12 judgment; and (7) the plaintiff's choice of forum. *See, e.g., In re Fountain Vill.*
13 *Dev.*, 2014 WL 4656506, **4-5 (D. Alaska 2014); *In re Silicon Valley Innovation*
14 *Co.*, 2012 WL 3778853, **4-5 (N.D.Cal. 2012); *Mendoza*, 2010 WL 5224136 at
15 **4-5; *Reid-Ashman*, 2008 WL 425638 at *1; *accord CreekrIDGE*, 410 B.R. at 629;
16 *KFC*, 2013 WL 3166165, at *14; *RFF Family*, 2010 WL 420014, at *7; *Tatum v.*
17 *Chrysler Group LLC*, 2011 WL 6303290, *7 (D.N.J. 2011).

18 The interest of justice will be served only if this case is transferred to the
19 Bankruptcy Court. Plaintiffs seek damages from FCA US that are attributable to
20 vehicle defects existing at the time of manufacture and/or to actions that FCA US
21 took pursuant to a very limited assumption of obligations owed the NHTSA.
22 FCA US did not even exist when Plaintiffs' allegedly defective vehicles were
23 manufactured and sold, and the Bankruptcy Court has issued an Order which bars
24 claims associated with design and manufacturing defects in these vehicles.
25 Moreover, it is only because FCA US assumed certain obligations *to the NHTSA*
26 that its challenged actions are before this Court. But, when the Bankruptcy Court
27 ordered that FCA US would assume certain liabilities to the NHTSA for vehicles it
28

1 did not manufacture, that Court expressly stated that FCA US would, aside from
2 the specific assumption noted, “not otherwise be liable.”

3 The Bankruptcy Court originally determined in its Sale Order which claims
4 would be barred if brought against FCA US for vehicles manufactured by Old
5 Carco. The Bankruptcy Court expressly retained jurisdiction to “implement[],
6 enforce[] and interpret[]” that Sale Order. And, notably, the United States Supreme
7 Court has made clear that a “Bankruptcy Court plainly ha[s] jurisdiction to
8 interpret and enforce its own prior orders.” *Travelers Indem. Co. v. Bailey*,
9 557 U.S. 137, 151 (2009). Here, the Bankruptcy Court should be given the
10 opportunity to do just that. Moreover, and in any event, the relevant factors all
11 favor transfer.

12 *First*, transfer will serve the economics of estate administration, “the most
13 important factor” in a § 1412 transfer analysis. *In re Fountain Vill.*, 2014 WL
14 4656506, at *5; *Reid-Ashman*, 2008 WL 425638, at *1; *Creekridge*, 410 B.R. at
15 630. When claims are intertwined with proceedings before a bankruptcy court, the
16 economics of estate administration factor weighs in favor of transfer. *Creekridge*,
17 410 B.R. at 630. The threshold issues here are clearly intertwined with matters
18 pending in the Bankruptcy Court. Not only is an interpretation of the Sale Order
19 required to determine if Plaintiffs’ claims are barred, but Plaintiffs’ claims raise the
20 potential for the bankruptcy estate to be subjected to civil liabilities either through a
21 direct claim or a claim for indemnification brought by FCA US. Because
22 Plaintiffs’ claims act as a challenge to the limitations in the Sale Order, and the
23 outcome of it could affect the estate of Old Carco, this “most important” factor
24 favors transfer. *See Quesenberry*, 2012 WL 3109431, at *5 (noting legal claims
25 which “challenge the limitations of liability in the Sale Order” “threaten to affect
26 the bankruptcy estate by altering the estate’s obligations,” thereby creating a “risk
27 of inconsistent interpretations that could unravel the Sale Order’s critical
28 inducement of transferring assets to [FCA US] free and clear” of certain liabilities).

1 *Second*, as courts within the Ninth Circuit (and elsewhere) have recognized,
2 there is a “presumption in favor of the forum where the bankruptcy case is
3 pending.” *Mendoza*, 2010 WL 5224136 at *5; *In re Nat’l Consumer Mortg. LLC*,
4 2010 WL 2384217, *2 (C.D.Cal. 2010); *Reid-Ashman*, 2008 WL 425638, at *1; *see*
5 *also Quesenberry*, 2012 WL 3109431, at *4 (“As a threshold matter, the Court
6 must presume that the proper venue for this case is the Bankruptcy Court”). The
7 pendency of the Old Carco Bankruptcy Proceeding in the Southern District of New
8 York, therefore, weighs in favor of transfer.

9 *Third*, transfer will promote judicial efficiency. Indeed, under similar
10 circumstances, one court observed that “transferring a claim related to a Sale Order
11 to the court that retained jurisdiction to interpret it promotes efficiency.” *Tatum*,
12 2011 WL 6303290, at *2. And, when the bankruptcy court is the one “most
13 familiar” with the issue presented, the judicial efficiency factor further favors
14 transfer. *RFF Family*, 2010 WL 420014, at *9. The Bankruptcy Court has had
15 before it many cases involving interpretation of the Sale Order’s provisions relating
16 to which liabilities FCA US assumed, and which it did not. *See* § II.C, *infra*. Thus,
17 judicial efficiency strongly favors transfer. Absent transfer, this Court will be
18 faced with interpreting and implementing a standing order which was written and
19 entered in a distant forum. Allowing a plaintiff to randomly choose a court to
20 interpret and enforce the Bankruptcy Court’s Sale Order could have far reaching
21 effect, and potentially lead to inconsistent interpretations by courts in hundreds of
22 jurisdictions across the country. In contrast, transferring this case to the
23 Bankruptcy Court which entered the Sale Order and retained jurisdiction to
24 interpret and enforce it, will ensure it is uniformly interpreted and applied.

25 *Fourth*, if the Bankruptcy Court were to find that FCA US did assume any
26 liabilities associated with any claim made by Plaintiffs, such claims will be
27 transferred back to this Court. Thus, the “fair trial” criterion is a non-issue. Even
28

1 if it were an issue, there is no reason to believe that transfer will deprive any party
2 of a fair trial.

3 *Fifth*, California's interest in having this case decided here will not be lost by
4 a transfer since FCA US is in full agreement that the Bankruptcy Court should
5 follow its normal and routine practice of returning any remaining claims to this
6 Court for purposes of discovery and trial once the threshold issues necessitating an
7 interpretation of the Sale Order are resolved. In any event, in a case like this that is
8 brought on behalf of every vehicle owner in every state, California has no greater
9 interest in having this case decided within its borders than does any other state.
10 Accordingly, the "local controversy" factor does not weigh against transfer.

11 *Sixth*, and similarly, because any remaining claims will be remanded back to
12 this Court, the enforceability of judgment factor is also a non-issue. In any event,
13 any judgment entered by the Bankruptcy Court would be equally enforceable as a
14 judgment entered in this Court. FCA US is registered to do business in both the
15 home state of the Bankruptcy Court and in this State. The ability to enforce any
16 judgment entered against it would be no different in the two alternative fora.

17 *Seventh*, while Plaintiffs' choice of forum is this Court, this factor would be
18 present in every case in which transfer is sought. Standing alone, this factor is,
19 obviously, insufficient to defeat transfer (or else no transfer could ever be granted).

20 Plaintiffs' claims make it necessary to interpret the Sale Order as a threshold
21 matter to determine whether those claims are barred. The Bankruptcy Court is in
22 the best position to resolve the issues pertaining to the interpretation and
23 enforcement of the Sale Order. Accordingly, this case should be transferred.

24 **C. The Bankruptcy Court Has Consistently Exercised Its Jurisdiction To**
25 **Interpret And Enforce Its Sale Order.**

26 Since entering the Sale Order, the Bankruptcy Court has made clear that it
27 intends to do what it said it would do. That is, the Bankruptcy Court has continued
28 to exercise its jurisdiction over civil cases brought against FCA US which

1 necessarily implicate the Sale Order and require an interpretation of it. *See, e.g.,*
2 *Burton v. Chrysler Group LLC*, 492 B.R. 392 (S.D.N.Y. 2013) (interpreting Sale
3 Order and determining that certain claims pleaded by plaintiffs were barred under
4 its terms); *Wolff*, Case No. 09-50002, Adv. Proc. No. 10-05007, attached as
5 Exhibit 7 to RJN (noting its “special expertise regarding the meaning of its own
6 order,” Bankruptcy Court interpreted Sale Order to bar plaintiff’s claims).

7 The Bankruptcy Court’s continued exercise of jurisdiction makes clear that it
8 intends to continue to act as the court with the “expertise” to interpret and enforce
9 the Sale Order. FCA US respectfully requests that this Court defer to the expertise
10 of the Bankruptcy Court and grant FCA US’s Motion to Transfer.

11 IV. CONCLUSION

12 For the reasons outlined herein, Defendant FCA US LLC respectfully
13 requests that this Court transfer this case to the United States District Court for the
14 Southern District of New York, for referral to the Bankruptcy Court in that District.

15
16
17 Dated: May 27, 2016

THOMPSON COBURN LLP

18 By: /s/ Rowena Santos

19 Rowena Santos
20 Kathy A. Wisniewski
21 Stephen A. D’Aunoy
22 Scott H. Morgan

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CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2016, I electronically filed the foregoing document using the CM/ECF system which will send notification of such filing to the e-mail addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List.

By: /s/ Rowena G. Santos